CF0000061985

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 308 OF 99

APPELLANT : BHIKAM,
(IN JAIL) Son of Chhanulal Yadav, aged about 26 years, resident of Mudkhusra, P.S.Charama District Kanker M.P.

- v e r s u s -

RESPONDENTS : THE STATE OF M.P. ,
through P.S.Charama District Kanker.

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

(2084)

1/2/99
J. Tiwari
Advocate

38

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 308 OF 1999

Bhikam

Vs.

The State of Madhya Pradesh
(Now Chhattisgarh)

J U D G M E N T

39

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 308 OF 1999

Bhikam

Vs.

The State of Madhya Pradesh
(Now Chhattisgarh)

CORAM : HON'BLE SHRI FAKHRUDDIN &
HON'BLE SHRI DHIRENDRA MISHRA, JJ

Present : Shri S.K. Dadsena, counsel for the appellant.
Shri M.P.S. Bhatia, Panel Lawyer for the State.

JUDGMENT

Per Dhirendra Mishra, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 29-1-1999 passed by learned Additional Sessions Judge, Kanker, in Sessions Trial No.444/94 by which learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death of deceased Laxmi Narayan @ Dhulmul has convicted the appellant under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. Case of the prosecution in brief is that the appellant had gone to the house of a lady namely Laxmi of the village at about 12.00 in the night on the date of incident i.e. 2-6-1994. Deceased and his friends suspected that the appellant had illicit relationship with Laxmi and therefore they all with intention to catch the appellant went there and in the meanwhile the appellant dealt several knife blows on Laxmi Narayan. Somehow deceased struggled to reach up to varandha of Shankar Hirwani.

3. Ramesh (PW-1) saw the incident and in fact he dissuaded the appellant. At that time Raghuveer (PW-3) reached there and the deceased made an oral dying declaration before him that he was assaulted by the appellant and thereafter he died. Rikeshwar (PW-2) lodged the report on 3-6-1994 intimating Bhikam Yadav responsible for the death of Laxmi Narayan vide Ex.P/8. After performing inquest on the person of the deceased (Ex.P/11) the body was sent for autopsy to Primary Health Centre, Charama where Dr. R.C. Agrawal (PW-4) conducted post mortem and submitted his report of Ex.P/8.

4. After investigation charge sheet was filed and charge under Section 302 of the indian Penal Code was framed against the appellant, who abjured the guilt.

5. The prosecution in order to establish the charge against the appellant has examined 6 witnesses in all. Thereafter statement of the accused was recorded under section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. Learned trial Court after hearing the Public Prosecutor and the counsel for the appellant held the appellant guilty and convicted & sentenced him as mentioned above.

6. Dr. R.C. Agrawal (PW-4) has ted post mortem and submitted his report of Ex.P/8. In the report the Doctor has found 14 incised injuries over the person of the deceased which have been described in para 8 of the impugned judgment. It is further opined that the

cause of death was excessive bleeding due to the above injuries and the same was homicidal in nature. Thus from the evidence of Dr. R.C. Agrawal (PW-4) and his report, the homicidal death of the deceased Laxmi Narayan is established.

7. Rikeshwar (PW-2) son of the village Kotwar has lodged the report of Ex.P/8 & merg intimation of Ex.P/9 and has proved the above documents. He has stated before the Court that he does not know as to how Laxmi Narayan died. On the date of incident at about 12.00 and 1.00 in the night Narayan Sahu and Kewal Sinha came to him and they informed that the murder has taken place near the house of Shankar whereupon he reached there and found Laxmi Narayan was crying for water. He brought water from near by a house and in the meanwhile Raghubeer reached there and thereafter he went to call the father of Laxmi Narayan as per the advice of Raghubeer. At that time the father of the deceased came and Laxmi Narayan handed over the watch to his father and thereafter he died.

8. Ramesh (PW-1) is the sole witness according to the case of the prosecution, however, he has not supported the prosecution case and he has been declared hostile. This witness has stated in examination-in-chief that on the date of incident he was sleeping in his house and there he heard noise that murder has taken place whereupon he woke up and went near the house of Bannu and saw that Dhulmul@Laxmi Narayan had fallen on the lane and he had died. He has also stated that there was a large crowd of the villagers gathered and villagers were shouting that the accused Bhikam has killed Laxmi Narayan, however, he did not

find Bhikam near by nor he had seen Bhikam assaulting the deceased. He was confronted with his diary statement of Ex.P/8 by the learned Public Prosecutor, after declaring him hostile. However, he stuck to his statement in the examination-in-chief.

9. Raghubeer Ram (PW-3) is a witness of oral dying declaration. He has stated that he recognized the accused, Laxmi Narayan has died. Laxmi Narayan died two years back. Laxmi Narayan was lying dead near the house of Shankar. He also stated that he went there after hearing noise. When he reached, the deceased was crying for water whereupon he offered him water. At that time deceased said that Bhikam has assaulted him by knife and he would not survive. In the meanwhile father of the deceased came there whereupon he handed over the deceased to his father and gone away. In the cross-examination the witness stated that at that time 8-10 persons were also present and they did not disclose about the *marpeet*. He also did not notice any injuries on the person of the deceased. Deceased was crying for water and he was not in a position to talk properly. He has denied the suggestion that after drinking water there was no conversation between him and the deceased or the deceased did not inform that Bhikam assaulted him with knife. He has further stated that other 8-10 persons referred above were standing at a distance and nobody dared to come near the deceased. He has admitted that he did not see the accused assaulting the deceased with knife. He was again called for cross-examination on 7-11-1998; however, the defence could not elicit anything in the cross-examination of this witness which makes the statement of this witness unreliable or untrustworthy.

43

10. Learned counsel appearing for the appellant submits that there is no eyewitness to the incident and oral dying declaration is the weak type of evidence and Court below ought not to have acted upon the statement of Raghubeer (PW-3) and ought to have extended the benefit of doubt to the appellant as the statement of this witness is not corroborated by any other evidence. Learned counsel submits that the case of the prosecution is based on eyewitness account, however, the alleged eyewitness Ramesh (PW-1) has not supported the prosecution case and in the aforesaid circumstances the impugned judgment suffers from illegality and the same is based on improper appreciation of evidence.

11. On the other hand, learned counsel for the State supported the impugned judgment.

12. We have perused the record as also the impugned judgment. We have already recorded the main features of the evidence on the basis of which the conviction is based. The Court below basically relying upon the statement of Raghubeer (PW-3) has held the appellant responsible for the crime in question. We have already held above that the defence has not been able to elicit anything which discredits the statement of Raghubeer (PW-3). Further more the statement of Raghubeer (PW-3) is corroborated in material particulars by the statement of Rikeshwar (PW-2) who has lodged the report of the incident and in which he has mentioned that the deceased made a oral dying declaration that the accused assaulted him with knife. Rikeshwar (PW-2) has stated that when he reached near the spot he saw that Laxmi Narayan was crying for water and at that time Raghuveer came there and as per advice of Raghuveer he went to call the

(44)

father of Laxmi Narayan. Thus the presence of Raghuveer when the deceased was crying for water was established. The knife injuries have been found by Dr. R.C. Agrawal (PW-4) in his post mortem report, which corroborates the oral dying declaration of the deceased. Therefore, considering the statement of Raghubeer (PW-3), we are of considered opinion that the statement of this witness is such on which implicit reliance can be placed and the Court below has not committed any illegality or material irregularity in convicting the appellant on the basis of statement of Raghubeer (PW-3).

13. In the result, the appeal fails being devoid of substance and is accordingly dismissed.

Sd/-
Fakhruddin
Judge
30-8-2006

Sd/-
DHIRENDRA MISHRA
Judge
30-8-2006

Gowri